IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
April 15, 2009 Session

TERETHA AKINS v. STATE FARM INSURANCE COMPANY, ET AL.

Appeal from the Law Court for Washington County
No. 26645 Jean A. Stanley, Judge

No. E2008-01108-COA-R3-CV - FILED MAY 8, 2009

The plaintiff filed a civil warrant alleging that the defendants were guilty of "conversion, fraud, negligence, Consumer Protection Act [violations, and] breach of contract . . . ." After a trial in the General Sessions Court, that court dismissed with prejudice all causes of action against the defendants. The plaintiff then appealed to the Law Court, which found that the plaintiff's claims were time barred and granted the dispositive motions of the defendants. The plaintiff has appealed. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Law Court Affirmed; Case Remanded.

JOHN W. MCCLARTY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and D. MICHAEL SWINEY, J., joined.

Teretha Akins, Johnson City, Tennessee, Pro Se.

Michael K. Atkins, Knoxville, Tennessee, for Appellee, State Farm Insurance Company.

John S. Taylor, Johnson City, Tennessee, for Appellee, Bill Gatton Chevrolet-Cadillac-Isuzu.

W. Mitchell Cramer and Carrie S. O'Rear, Knoxville, Tennessee, for Appellee, Hartford Insurance Company.

MEMORANDUM OPINION[1]

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[1]Rule 10 of the Rules of the Court of Appeals provides: "This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a (continued...)

I. BACKGROUND

From the record before us on this appeal, we derive the following facts. The plaintiff, Teretha Akins ("Akins"), an insured of defendant State Farm Mutual Automobile Insurance Company ("State Farm"), was involved in an automobile accident with an insured of defendant Hartford Insurance Company ("Hartford") on December 4, 1996. The accident occurred through no fault of Akins – her vehicle was damaged while parked and unattended in a Target parking lot. Akins subsequently presented her 1992 Cadillac Seville to defendant Bill Gatton Chevrolet-Cadillac-Isuzu ("Dealership") to obtain the necessary repairs.

According to the Dealership, an inspection of the vehicle revealed body damage to the right side doors and moldings. The necessary repairs were completed and the vehicle returned to Akins on January 24, 1997. The bill for those repairs was paid by Hartford.

At some point disputed by the parties, Akins reported unusual noises in the front suspension and the undercarriage around the middle of the car. The Dealership determined that the catalytic converter was damaged internally from ordinary wear and tear and that an electric failure had occurred in the front struts. Akins was advised that these problems could not be attributed to the accident. According to the Dealership, however, Akins, despite knowledge of this information, authorized it to perform the additional repairs. Akins admits she was aware that it had been determined the additional problems were unrelated to the accident and would not be paid by Hartford. At this time, however, she requested that Hartford and State Farm re-evaluate the relationship between the accident and the additional repairs. The insurers both later notified her by correspondence that, despite further review, they could not find that the additional problems with the vehicle were related to the accident.

The Dealership notified Akins on March 12, 1997, that the vehicle was ready and advised her that she would need to pay for the additional repairs before she could retrieve the car. Akins, however, never claimed the vehicle – it sat on the lot of the Dealership for over five years until it was sold by the Dealership in 2002, subject to a lien pursuant to T.C.A. § 66-19-101.[2]

Akins, proceeding pro se, filed this lawsuit on November 16, 2007. Our review of the record reveals that one of her contentions is that the Dealership wrongfully determined that certain problems with her vehicle *after* the accident – relating to repairs that had been made *prior* to the accident – were not a result of the accident and needed to be replaced again. She further complained that the Dealership sold her car without providing her notice. In regard to State Farm, Akins asserted the insurer charged her a premium for utilizing a "lease car" during the time period when her car was

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[1](...continued)
formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated 'MEMORANDUM OPINION,' shall not be published, and shall not be cited or relied on for any reason in any unrelated case."

[2]Akins states she did not learn that the car had been sold until November 21, 2006. She claims the vehicle was sold in 2004 – not 2002.

at the Dealership and she rode the bus. She also contended that State Farm should have paid for the repairs to her car for which Hartford would not pay. As to Hartford, Akins claimed it had refused to fix the additional problems with her car because she had driven it immediately after the accident. It further appears that Akins asserted the insurers had conspired with the Dealership in some manner to avoid paying for the repair costs. The one issue Akins did not address was the statute of limitations defense.

At both the general sessions and trial court levels, the defendants filed dispositive motions. In its motion for summary judgment, the Dealership asserted that the applicable statutes of limitations had run such that all causes of action brought against it by Akins should be dismissed as time barred. The Dealership noted that

> even under the most generous (to the Plaintiff) statute, any such cause of action would have expired six (6) years after March 17, 1997, the date the repairs were completed on Plaintiff's vehicle.

The Dealership's General Manager averred in an affidavit that

> it has had no contact with this Plaintiff since the aforesaid repairs were completed on or about March 12, 1997 and that they have had no dealings [of] any kind with this Plaintiff or her property since November 29, 2002, the date of the sale of the repaired vehicle to cover, in part, the cost of repair of her vehicle.

In their motions to dismiss, State Farm and Hartford likewise asserted that all the causes of action alleged have expired under the applicable statutes of limitation.

On April 28, 2008, the trial court granted the dispositive motion of the Dealership, ordering as follows:

> The Court finds that [the Dealership] is entitled to judgment as the matter of law, there being no genuine issue of material fact in dispute on which a trial should be had. In so ruling, the Court finds as a matter of law that all potential causes of action of the Plaintiff in this cause have expired under the applicable statutes of limitation, thus entitling [the Dealership] to judgment as a matter of law.

An order of dismissal was entered as to State Farm on May 1, 2008:

> ORDERED, ADJUDGED and DECREED that defendant State Farm's Motion to Dismiss is hereby GRANTED on the grounds that the plaintiff failed to timely file her lawsuit within the requisite statutes of limitation and as a result, plaintiff's Complaint against defendant State Farm is dismissed with prejudice . . . .

Hartford was dismissed eight days later:

> The Court finds that Hartford Insurance Company is entitled to dismissal of the suit against it finding that as a matter of law all potential causes of action of the Plaintiff in this cause have expired under the applicable statutes of limitation . . . .

Akins has timely appealed.

II. ISSUE

The issue we address in this appeal is whether the applicable statutes of limitations had expired at the time Akins filed suit.

III. STANDARD OF REVIEW

"Whether a claim is barred by an applicable statute of limitations is a question of law." *Brown v. Erachem Comilog, Inc.*, 231 S.W.3d 918, 921 (Tenn. 2007). The court reviews legal issues under a de novo standard for review, according no deference to the conclusions of law made by the lower court. *Toms v. Toms*, 209 S.W.3d 76, 79 (Tenn. Ct. App. 2005).

Defenses based on a statute of limitations are particularly amenable to determination by dispositive motions. *See Creed v. Valentine*, 967 S.W.2d 325, 327 (Tenn. Ct. App. 1997). Generally, the facts material to a statute of limitations defense are not in dispute. The courts themselves can bring to bear the applicable legal principles to determine whether the moving party is entitled to a judgment as a matter of law. *Cherry v. Williams*, 36 S.W.3d 78, 83 (Tenn. Ct. App. 2000).

IV. DISCUSSION

As a general rule, a cause of action for an injury accrues when the injury occurs. *See Whaley v. Catlett*, 53 S.W. 131, 133 (Tenn. 1899). Once an injury occurs, a cause of action accrues to the person injured, and, subject to certain exceptions, the time for filing a lawsuit to redress the injury begins to run. *Cherry*, 36 S.W.3d at 83.

T.C.A. § 28-3-105 states that all property tort (negligence) causes of action must be commenced within three years of the cause of action. Fraud is subject to the three-year property tort statute of limitation. *Keller v. Colgems-EMI Music, Inc.*, 924 S.W.2d 357, 360 (Tenn. Ct. App. 1996). The cause of action for conversion is also governed by the three-year statute of limitation. *Sibley v. McCord*, 173 S.W.3d 416, 420 (Tenn. Ct. App. 2004). Per T.C.A. § 28-3-109(a)(3), actions on contracts not otherwise expressly provided for shall be commenced within six years of the cause of action accruing. T.C.A. § 47-18-110 states that any action commenced under Tennessee's Consumer Protection Act shall be brought within one year from the person's discovery of the unlawful act or practice, but in no event shall such action be brought more than five years after the date of the consumer transaction giving rise to the claim for relief.

The longest of the applicable statutes of limitation would be the six years for breach of contract. Even if the court could find that there was a contractual relationship and that a breach of a contract occurred, viewed generously, any cause of action would have expired in March of 2003, six years after the repairs made to Akins' vehicle on March 17, 1997. Akins knew back in March 1997 that the repair bill was due and the insurers were not intending to pay it. Because the statutes of limitation began running in March 1997, Akins' suit filed in November 2007 was time barred. All of the alleged causes of action had clearly expired under the applicable statutes of limitation by the time of the filing of the civil warrant.

V. CONCLUSION

The trial court's judgment is affirmed. This case is remanded to the trial court for further proceedings pursuant to applicable law. Costs on appeal are taxed to the Appellant, Teretha Akins.

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JOHN W. McCLARTY, JUDGE